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IN THE

Supreme Court of the United States

October Term, 1937

No. 293

EDWARD LAUF and AMALGAMATED MEAT CUTTERS and BUTCHER WORKMEN OF NORTH AMERICA, Local No. 73,
Appellants,

-vs.-

E. G. SHINNER & COMPANY, INC.,
Respondent

APPELLANTS' BRIEF

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Appellants,

vs.

E. G. SHINNER & COMPANY, INC.,

Respondent.

APPELLANTS' BRIEF

The writ of certiorari is directed to the judgment of the Circuit Court of Appeals, for the Seventh Circuit, rendered May 13, 1937, 90 Fed. (2) 250, (T.R. 25), awarding a permanent injunction to respondent against appellants enjoining all picketing and peaceful persuasion on their part.

The judgment of the Circuit Court of Appeals was rendered in a second appeal after it had affirmed a decree of the United States District Court for the Eastern District of Wisconsin awarding a temporary injunction of the same scope as the permanent injunction. (*Lauf v. Shinner*, 82 F. (2) 68).

PROCEEDINGS BELOW

The action was commenced in the United States District Court for the Eastern District of Wisconsin by respondent against appellants upon a complaint (T.R. 29) setting forth that respondent is a Delaware corporation having its principal place of business in Wilmington, Delaware, and that it is the owner and operator of five meat markets in the City of Milwaukee, State of Wisconsin; that appellant Lauf is business manager of the appellant Amalgamated Meat Cutters and Butcher Workmen of North America, Local 73, and that Local 73 is an association of individuals; that respondent has had in its employ over 30 persons engaged in conducting the aforementioned meat markets, and that for many years its relations with its employees have been harmonious, mutually satisfactory and peaceful, and that it has paid its employees higher wages than those received by members of appellant union in other markets in Milwaukee; that it believes that none of its employees are members of appellant labor union, and that all of said employees have rejected repeated solicitations to become members of said union; that respondent has always permitted its employees to join appellant labor union, but that all of its employees upon being informed that they were free to join said union declined and refused to join said union, or to permit it to act as their representative or agent, and that said appellant union is not the union chosen by said employees to represent them in negotiating with respondent; that appellants in violation of Sec. 268.18, Wisconsin Statutes, have made demands upon respondent that it enter into a contract with appellant labor union to employ only members of said union, and to negotiate only with the duly elected officers of said union, and not to contract with anyone not affiliated with

said union, and that in violation of the rights of respondent and its employees appellants conspired for the unlawful purpose of coercing respondent to force its employees contrary to their wishes to join appellant union and accept it as their bargaining representative, and for the purpose of injuring and destroying respondent's business; that pursuant to said conspiracy continuously from April 6, 1935 appellants caused persons unknown to respondent, and none of whom were employees of respondent, to parade and picket before said meat markets during business hours bearing false and misleading signs and banners, and upon information and belief caused said pickets to create noisy disturbances, jostle and crowd respondent's customers and obstruct the entrances to said markets to prevent customers from examining meats displayed in the windows, call customers entering the markets vile names, to threaten said customers, to unlawfully accost, annoy and molest prospective customers, to falsely say and represent that respondent treated its employees unfairly in the matter of union representation, that respondent pays starvation wages and is unfair to organized labor. All of said statements made by said pickets being false and untrue, and all of said acts are done pursuant to a conspiracy and are designed to, and have the effect of preventing customers from patronizing respondent's markets; that appellants threaten to continue said acts and unless enjoined respondent will suffer irreparable injury to its business.

The complaint prays for a temporary and permanent injunction enjoining the appellants from in any wise picketing, or from representing or stating that respondent is unfair in its dealings with its employees, and from soliciting any customers to cease patronizing respondent.

Appellants answered (T.R. 36) denying that respondent paid higher wages than union members received in other markets; that respondent's employees worked longer hours than those prescribed by appellant union; denying that no employees of respondent were members of appellant union, and alleging that respondent discharged employees upon discovery that they were members of appellant union; denying that respondent's employees had rejected solicitations to become members of appellant and alleging that several employees desired to become members, and some did become members but that respondent created a company union known as the Shinner Milwaukee Employees Association, and induced its employees to join the same; that said association was created by respondent in violation of the statutes of Wisconsin, and was an organization created for the express purpose of interfering with the rights of employees to organize and bargain collectively, through representatives of their own choosing; denying that respondent permitted, or is willing to permit, its employees to join appellant union; that officers of the appellant union informed respondent that several of its employees had joined the union and others wished to join, and that appellant union had an agreement with other meat dealers regulating hours and wages, and that it wanted respondent to enter into the same agreement; that respondent refused to enter into any agreement and refused to grant its employees the terms and conditions set forth in said agreement; that there is a labor dispute between the parties as defined in the Norris-LaGuardia Act; that such dispute involves terms and conditions of employment, and that the parties are engaged in the same craft, trade and industry; denying the commission of any illegal acts; denying any conspiracy to commit unlawful acts, and alleging they have picketed in small numbers and

peacefully; that the picketing has been in accordance with the Norris-LaGuardia Act and the Wisconsin Labor Code; that conduct of appellants has been peaceful and law abiding and without any illegal interference with the rights of respondent; that officers of respondent have annoyed and abused officers, agents and members of appellant union, and have called pickets vile and indecent names.

The District Court considered the case as coming under the Norris-LaGuardia Act (29 U.S.C., Sec. 101 to 115); in that it required oral evidence to be taken in open court upon the hearing for the temporary injunction (T.R. 39 to 65).

At the conclusion of the hearing the District Court made findings of fact and conclusions of law (T.R. 66) as follows:

That respondent is a Delaware corporation and owns and operates five meat markets in the City of Milwaukee, Wisconsin, and has in its employ 35 persons in said meat markets; that none of its employees were at the time of the commencement of the action members of appellant Local 73; that appellants made demand upon respondent that it require its employees as a condition of their continued employment to become members of Local 73; that appellant notified its employees that they were free to join said union; that said employees declined and refused to join, and that said union was not the union chosen by any of said employees to represent them in any respect with respondent; that for the purpose of coercing respondent to require its employees to join said union and accept it as their bargaining representative, and for the purpose of injuring appellant's business, appellants conspired and have since April 6, 1935, caused false and misleading signs and banners to be placed before appel-

lant's markets, and have caused persons none of whom are employees of appellant to picket before said markets, and have falsely accused appellant of being unfair to organized labor with reference to its employees, and have prevented patrons from patronizing said markets by molestation, annoyance, threats and intimidation; that respondent will suffer irreparable injury unless appellants are restrained from said conduct; that there is no labor dispute between appellants and respondent.

The conclusions of law upon the foregoing findings of facts, are:

That respondent is bound by the terms of 29 U.S.C., Sec. 102 and Secs. 268.18 and 268.19, Wisconsin Statutes to permit its employees free agency in the matter of choice of a labor union to act as their representative; that respondent is entitled to the injunction.

Upon the foregoing findings of fact and conclusions of law an injunction pendente lite was issued (T.R. 69) enjoining appellants from in any wise picketing the markets of respondent; from seeking in any manner to coerce respondent to discharge its employees because they do not choose to join Local 73; from attempting to coerce respondent to compel its employees to join Local 73 and accept it as their bargaining representative; from advertising, stating or pretending that respondent is in any wise unfair to appellants or organized labor generally, and from annoying, molesting, persuading or soliciting any customers to cease patronizing respondent's markets.

An appeal was taken from the order awarding this injunction to the Circuit of Appeals for the Seventh Circuit which affirmed the District Court, 82 F. (2) 68.

The opinion of the Circuit Court of Appeals is based upon the premise, that:

"No strike or dispute between employer and employee is here involved,"

and the court states the issue involved upon the appeal to be whether a labor union not representing any employees of a business can lawfully picket that business and injure it for the purpose of compelling the employer to accept the union as the sole bargaining agent of his workmen over their protest, and to the exclusion of the agency which the employees in the exercise of their free choice have unanimously selected.

The court quotes Sec. 101, Title 29 (see appendix) and Sec. 102 and underscores the following:

> " * * * though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, * * * and designation of representatives of his own choosing, * * * free from the interference, restraint, or coercion of employers * * * in the designation of such representatives, * * * "

and states further, that Sec. 104 enumerates the specific acts which may not be restrained quoting the section. The court further quotes Sec. 107 containing the specific restraint on federal jurisdiction with reference to injunctions in labor disputes, and Secs. 108 and 109 containing further limitations. The court then quotes Sec. 113 containing the definitions of the terms used in the act.

It is stated in the opinion that the provisions of the Wisconsin Labor Code are substantially the same as the provisions of the Norris-LaGuardia Act and that part of Sec. 103.51, Statutes of Wisconsin (see

appendix) announcing the public policy that the employee shall be free from the employer's restraint in choosing representatives and in self-organization is quoted.

On the basis of its previous decision in *United Electric Coal Co. v. Rice et al,* 80 F. (2) 1, the court holds that no labor dispute is involved in the present case, and says, that the labor dispute defined by the Norris-LaGuardia Act does not include disputes between employes, or between employe unions. The court says that the real controversy in this case is between two unions as it was in the Rice case, but that the present case is stronger, because none of respondent's employees is a member of appellant union, and that the employer is not engaged in the labor dispute with anyone, but that the controversy is rather a unilateral one to coerce respondent to compel its employees to join appellant union; that it would amount to a violation of both the Norris-LaGuardia Act and the Wisconsin Labor Code if respondent complied with appellants' demand, because under these laws the employer is specifically enjoined from influencing his employees in their choice of a union or representative; that respondents' employees have refused to join appellant's union, have organized their own union without interference of their employer, and their rights in this respect are protected by both laws.

The court further states, that the public policy of the nation and the State of Wisconsin establishes the substantive rights of respondent's employees which the courts will protect even without specific provision in the acts; that since it is unlawful for respondent to dictate to its employees what organization they should join, and what representatives they should choose, and

likewise unlawful to refuse to recognize the agency which they have selected, appellants' demand upon respondent was unlawful, and quoting from *Truax v. Corrigan,* 257 U.S. 312, the court concludes that appellants' conduct is a tort and should be enjoined.

The court says, that appellants' contention that they may attain their ends by picketing at any time or place, does not follow from any fair construction of the statute; that there must be a cause for such interference with business, and that here there was no semblance of such cause, because there was no labor dispute since the relationship of employer and employee did not exist.

Referring to the case of *American Foundries v. Tri-City Council,* 257 U. S. 184, the court says, the union's right to increase its membership is not questioned, but that the law is not a warrant for illegal interference with the rights of the non-union man, and that the court cannot think that Congress or the Wisconsin Labor Code intended to increase the union's rights in this respect.

Upon this basis the court concludes that it was not incumbent upon the District Court before issuing injunctive relief to make the findings that unlawful acts had been committed, etc., as provided in the Norris-LaGuardia Act, and that since there is no labor dispute, the statutes have no application.

Following this decision the case was tried on the merits in the District Court, a small amount of additional evidence being taken (T.R. 2). It was stipulated that the testimony taken upon the hearing of the

preliminary injunction should stand as testimony upon the trial.

The District Court again made and filed findings of fact and conclusions of law (T.R. 6) which are identical with the findings of fact and conclusions of law made upon the hearing for preliminary injunction, and issued a writ of permanent injunction (T.R. 10) identical with the preliminary injunction.

From the final decree awarding this injunction, appeal was again taken to the Circuit Court of Appeals for the Seventh Circuit. It was stipulated that the record upon the previous appeal be considered a part of the record on the second appeal, and an order to this effect was allowed by the Circuit Court of Appeals (T.R. 1).

After the hearing upon the second appeal, the Circuit Court of Appeals decided that its decision upon the previous appeal was correct, and should be followed (T.R. 25; 90 F. (2) 250).

A motion for rehearing was made after the decision in *Senn v. Tile Layers Protective Union, Local No. 5,* 301 U. S. 468, 81 L. Ed. 829, 57 (16) S.C.R. 857; by this court, which motion was denied.

APPELLANTS' CONTENTIONS

I.

The case involves a labor dispute within the terms of the Norris-LaGuardia Act, 29 U.S.C. 101 to 115.

II.

The Norris-LaGuardia Act was intended to and does broaden the rights of organized labor as set forth in the Clayton Act and interpreted in *American Steel*

Foundries v. Tri-City Central Trades Council, 257 U. S. 184.

III.

Peaceful picketing and peaceful persuasion were legal conduct under the facts in this case.

IV.

The case involves a labor dispute within the terms of the Wisconsin Labor Code, Wisconsin Statutes 1935, 103.51 to 103.63, and the acts of appellants in this case are expressly legalized by that act.

V.

The constitutionality of the Norris-LaGuardia Act is beyond question and has been decided by this court.

VI.

The decision of the Circuit Court of Appeals is not in accord with existing law.

VII.

The decree of the District Court awarding the injunction without the findings of fact required by the Federal and Wisconsin Statutes, was without jurisdiction and the decision affirming it is erroneous.

ERRORS ASSIGNED

The court erred in:

1. Holding that there was no labor dispute.

2. Holding that the Norris-LaGuardia Act did not apply.

3. Restraining appellants from all picketing and all peaceful persuasion and from conveying information that respondent is unfair to organized labor.

4. Holding that the Wisconsin Labor Code does not apply.

5. Awarding the injunction.

6. Holding that respondent need not comply with 29 U.S.C. 101 to 115, and Wisconsin Statutes, Sec. 103.56, which are conditions precedent to injunctive relief, and that the trial court need not make the findings required by said statute.

SYNOPSIS OF ARGUMENT

Sections of Acts involved 15

Section 4 of the Act takes away jurisdiction to issue injunctions 15

Enumerates the following which may not be enjoined: giving publicity to labor dispute, assembling peaceably to act in labor dispute, advising anyone of intention to do said acts 15

29 U.S.C. 113 (c) expands labor dispute to include controversies concerning condition of employment or association of persons in negotiating terms or conditions of employment regardless of proximate relation of employer and employe 15

29 U.S.C. 113 (a) broadens scope of definition of labor dispute 16

113 (b) further defines scope of labor dispute..... 16

Sec. 4 of Norris-LaGuardia Act clearly takes away jurisdiction of Federal courts to issue labor injunctions 17

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History of the Norris-LaGuardia Act also shows the correctness of this definition 26

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Picketing and persuasion are not torts 41

Decision in Circuit Court of Appeals that they are wrongful, is erroneous 42

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The decree of the District Court without making the findings required by the Norris-LaGuardia Act was without jurisdiction 50

The findings of fact required by the Act are conditions precedent to the issuance of injunctions 50

Hence the judgment of the Circuit Court of Appeals affirming the decree of the District Court, is erroneous 51

ARGUMENT

I.

THE CASE INVOLVES A LABOR DISPUTE WITHIN THE TERMS OF THE NORRIS-LAGUARDIA ACT, 47 STATS. 70, 73, 29 U.S.C. 101 to 115

A. Sections of Act Involved.

Sec. 4 of the Norris-LaGuardia Act, 29 U.S.C. 104 (see appendix) provides:

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are hereinafter defined) from doing whether singly or in concert, any of the following acts,"

and enumerates, among other things which may not be enjoined, the following which apply specifically to the present case:

> "(e) Giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking or patrolling;
>
> (f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;
>
> (g) Advising or notifying any person of an intention to do any of the acts specified."

Pursuant to the reference in Sec. 104, the term "labor dispute" is defined in 29 U.S.C. 113 (c) in detail in language leaving no doubt as to the intent of Congress in the use of the term, as follows:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employ-

ment, or concerning the association or representatives of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

The act provides further, 29 U.S.C. 113 (a) that:

"A case shall be held to involve or grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interest therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employer; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involved any conflicting or computing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined)."

And further enumeration analyzing "labor dispute" is contained in 29 U.S.C. 113 (b) that:

"A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation."

B. Jurisdiction to Issue Injunctions Limited.

Sec. 4 of the act, (29 U.S.C. 104) is clear beyond dispute and requires no interpretation by the courts, except as to the term "labor dispute." It takes away a part of that jurisdiction of the Federal courts which was granted by Congress, and which they derive only from the acts of Congress. Its terms are definite to this effect. The provision that:

> "No court of the United States shall have jurisdiction"

makes it clear beyond question that Congress intended definitely and beyond doubt to revoke the jurisdiction or power of the Federal courts to issue injunctions in labor disputes. It is not an attempt to alter procedure, but a definite abolition of a part of the equity jurisdiction of the Federal courts. The entire question of the scope of the section, and the extent of the abolition of jurisdiction of the courts, rests upon the definition of the words "labor dispute."

C. Interpretation of "Labor Dispute".

If Sec. 4 stood alone and no further definitions were given in the act, three possible interpretations of the words "labor dispute" would be open to the courts: 1, that it includes only controversies between an employer and *his* employees; 2, that it includes controversies between employers and employees in the same industry; 3, that it includes controversies between employers and any employees or workingmen.

That the first interpretation is not the one intended by Congress and is entirely too narrow to carry out the intent of Congress, is beyond doubt from the internal evidence, that is, the express language of the

act itself. Thus, Subsection (c) of Sec. 13, 29 U.S.C. 113 after the very comprehensive and inclusive language that a labor dispute is any controversy concerning terms or conditions of employment, or the association or representation of person in negotiating such terms and conditions of employment, contains the very definite enlarging terms that such a controversy is a labor dispute regardless of whether or not the disputants stand in the proximate relation of employer and employee. It is significant in the first place that Congress did not use the conventional and familiar terms in stating what shall be included in a labor dispute, such as "wages", "hours", etc., which had commonly been used in previous legislation, but definitely broadened the scope of the subject matter of the act by using the most comprehensive and inclusive term, that is, terms or conditions of employment. But to avoid all ambiguity, and to make its intent that the scope of the primary term "labor dispute" should be as broad as possible, definitely clear, it added the words at the end of the section that the contestants need not stand in the proximate relation of employer and employee. This eliminates the first of the definitions above stated, that is, that a labor dispute is limited to a controversy between an employer and *his* employees.

That this is true further follows clearly from subdivision (a) which provides that a labor dispute is involved when the persons are engaged in the same industry, craft or occupation. It is clear that if Congress had meant that a labor dispute existed only when the controversy is between an employer and his employees, this clause would not appear in the act. These words definitely broaden the scope of the term to include any controversies between employers and work-

men in the same industry or craft notwithstanding that such employees are not, and have not been, employees of the employer with whom they have the controversy. This language would clearly indicate the second definition given above.

But subsection (a) of Sec. 13, goes much farther in extending the scope of the term "labor dispute." It is notable that the several clauses of this subsection are in the disjunctive, and therefore clearly indicate that when the conditions described in any one of them are present, there is a labor dispute whether the conditions in any of the other clauses are present or not. The second clause of the subsection provides, that a controversy is a labor dispute when the persons involved have direct or indirect interests in the trade, craft or industry involved in the controversy. This clearly indicates the intent of Congress to adopt the third definition given above, that is, there is a labor dispute when any workingmen have a controversy with any employer, because clearly every working man has at least an indirect interest in every trade, craft or industry other than his own.

The third clause of the subsection refers to persons who are employees of the same employer, and if standing alone, would indicate definition No. 1 above.

The fourth clause of the subsection includes in a labor dispute a controversy between persons who are members of the same or affiliated organizations of employers or employees. This cannot mean other than if there is a controversy between any employer and any labor union belonging for instance to the American Federation of Labor, that is a labor dispute between such employer and all members of the American Federation of Labor, or if there is a controversy between an employer who is

a member of a National Chamber of Commerce or Merchants and Manufacturers Association, and his employees, there is a labor dispute between all members of such Manufacturers Association or Chamber of Commerce, and said employees. This definitely points to definition No. 3 above.

To make the matter absolutely clear Congress added in the same subsection words modifying all of the foregoing clauses, and providing that any one of the clauses defines a labor dispute, whether such dispute is (1) between one or more employers or associations of employers, and one or more employees or associations of employees. Thus a controversy between persons engaged in the same industry, or having a direct or indirect interest therein, or who are members of the same or affiliated organizations of employers or employees, (2) between one or more employers or associations of employers, and one or more employers and associations of employers, or (3) between one or more employees or associations of employees, and one or more employees or associations of employees. This explanatory language clearly contemplates disputes between employers or their associations, or between employees or their associations. The language is very significant in view of the statements of the Circuit Court of Appeals in this case that a controversy between rival labor unions takes the case out of the terms of the Norris-LaGuardia Act. While the present case presents no situation of controversy between rival independent labor unions, clearly if it did, Congress intended that it should still be within the terms of the act, and that no injunction should issue prohibiting the acts enjoined in this case. Therefore, even if the premise of fact of the Circuit Court of Appeals were correct, which it is not, its interpretation of the act as not including the present controversy would be definitely erroneous.

At the end of the subsection Congress has added an omnibus clause including in the term "labor dispute" any case involving any conflicting or competing interests of persons participating or interested therein. The language cannot mean anything except that a case involves a labor dispute when the parties are in competition either remotely or directly, or when their economic interests are in conflict with each other. This clearly contemplates any controversy between workingmen and employers in whatever industry the one or the other may be engaged, because every working man is in competition with every employer, and with every other working man in the sale of his labor, and he is in conflict with every employer in that he is trying to obtain as much as he can for the only thing that he has to sell, that is, his labor. There can be no doubt in the face of this language that "labor dispute" as used by Congress in the act was intended to mean what is set forth in definition 3 above.

By way of repetition and apparently to add further emphasis, in subdivision (c) Congress again provides that labor dispute shall include any controversy concerning terms and conditions of employment, or concerning the association or representation of persons in negotiating, or seeking to arrange terms or conditions of employment, and adds to the section the very definite and clear language which eliminates definition No. 1 above — "whether or not the disputants stand in the proximate relation of employer and employee". This language could have but one purpose, and that is, to prevent the very sort of construction of the term "labor dispute" which the Circuit Court of Appeals has given in this case.

It seems clear from the many clauses which have been discussed that Congress intended that "labor dispute" as used in the act should include any controversy between

workingmen and employers concerning their economic interests. It is also clear that the term was intended to include controversies between employees or labor unions. While the foregoing seems clear beyond reasonable doubt, the present case does not require the broadest definition of the term "labor dispute." The facts in the present case present a situation where employees or workmen in the same craft or industry have initiated and are carrying on a controversy with an employer likewise in the same industry. Appellants are all butcher workmen, respondent is engaged in the butcher or meat industry. Both sides are therefore in the same craft or industry. While it may be admitted that none of respondent's employees are members of appellant union, under definition No. 2 the controversy presents a labor dispute without question. There is here a controversy between those who are in competition with each other in the same craft or industry. It is not necessary therefore for this court to hold, what apparently was the intent of Congress, that any controversy between workingmen and employers of any kind, whether in the same industry or not, concerning terms and conditions of employment, is a labor dispute, but certainly, in the face of the repeated statements in the act, and the restatement in various forms of the thought, the court cannot avoid holding that a labor dispute is present when workingmen in the same craft or industry have a controversy with an employer in the like craft or industry, even though these workingmen are not employees of ex-employees of the employer.

A recent article discussing these sections is pertinent, Vol. L, No. 8, Harvard Law Review (June 1937), at pages 1297, 1298, 1299:

> "The majority of cases testing these provisions have given them full scope and effect. One of the

first problems to arise concerned picketing which had unionization, rather than any immediate improvement of conditions as its object. In *Levering & Garrigues Co. v. Morrin,* where some of the complainants' employees were members of the union, no controversy existed as to hours or wages, the activities of the union being directed toward the closed shop. The court declared that a labor dispute existed, since the union, in attempting to bring about a closed shop was 'seeking to arrange terms or conditions of employment', as described in Section 13. Even where no employees were members of the union the same result has been reached. To the argument made in *Cinderella Theatre Co. v. Sign Writers' Local Union,* that no labor dispute could exist since the single employee involved was content with existing terms of employment, the court replied that both the express terms of the statute and Congressional committee reports made it clear that the agitation parties could be other than employees. Later decisions likewise found it evident that under the Act a labor union desirous of unionizing a business could 'force' a labor dispute upon an employer and his non-union and uncomplaining employees.

"The trend begun by these decisions, however, was seriously disturbed by a group of cases decided by the Circuit Court of Appeals for the Seventh Circuit. In *Lauf v. E. G. Shinner & Co., Inc.,* it was held that no labor dispute existed under the Norris-LaGuardia Act when a labor organization picketed to unionize a non-union shop. Emphasizing the fact that no employee was a member of the union, the court reiterated its conclusion, reached in an earlier decision, *United Electric Coal Companies v. Rice,* that the term 'labor dispute' as used in the Norris-LaGuardia Act implied a controversy concerning wages and conditions of employment, and one which was between employer and employee or arising directly out of that relationship. This conclusion had

already been applied in *Newton v. Laclede Steel Co.* where, apparently some of the employees of the complainant were among those agitating for unionization.

"These decisions, flatly opposed to the terms of the statute, have been condemned as duplicating the restrictive treatment afforded the Clayton Act. Subsequent cases, however, arising under almost identical state acts, have shown no inclination to follow them. A recent Wisconsin case, in a careful and what promises to be an influential opinion, held the anti-injunction statute applicable to the situation where a shop of non-union and allegedly satisfied employees is subjected to unionization activity. Tracing the limited application given the Clayton Act and reciting the reforms intended by the present type of statute, the court declared that, in spite of the *Rice* and *Lauf* cases urged by the dissenting judges, it could not disregard the plain language of the statute and the legislative purpose and history behind it. On similar facts the Oregon court has reached the same result, likewise overriding a dissent based on the decisions of the seventh circuit. And a recent federal decision illustrates another method of dealing with these precedents. Apparently with the language of the *Rice* case in mind, a labor organization wishing to effect a closed shop induced two employees to join it, and then, after a perfunctory demand for higher wages, commenced its picketing activity. The court pointed out that since the controversy thus involved employer and employees and concerned problems of hours and wages, it need not choose between the *Rice* and *Lauf* cases on the one hand, and the opposing decisions of the other federal courts on the other.

"A second major problem concerning the applicability of the Act is presented when more than one union is involved in the controversy. The activity sought to be enjoined there arises out of rivalry as

to which of two hostile organizations shall represent the workers. If one of the rivals is a *'company'* union, the situation is hardly distinguishable from that already considered, for it is still union recognition that is demanded of the employer."

D. Historical Background of the Act.

In addition to the internal evidence in the language of the act itself, the history of labor legislation in Congress clearly demonstrates that the position here taken is correct, and that Congress intended, at least such a definition of the words "labor dispute" as would include the present controversy. The Clayton Act passed October 15, 1914 (38 Stats. 738), was the result of a long campaign by organized labor to obtain liberal legislation permitting greater rights in picketing and persuasion in strikes and labor controversies, and to restrict the courts in frustrating such labor disputes by injunctions. The hopes of organized labor based on this act were destroyed by the decision of this court in

American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184.

in which this court held that notwithstanding the Clayton Act workingmen who were neither employees nor ex-employees could be enjoined from picketing and other incidental activities in a labor controversy. It was held that while employees and ex-employees, and members of a labor union of such employees and ex-employees could not be enjoined from peaceful picketing, persuasion, etc., other workingmen, even in the same craft or industry could be so enjoined.

Organized labor started on another campaign to obtain legislation eliminating the limitations of this decision.

(72nd Congress, Senate Report 163, Feb., 1932). After long effort to persuade Congress to extend the scope of its labor legislation, this was finally accomplished in the Norris-LaGuardia Act. There can be no question but that the sole purpose of the act was to change the law as it had been laid down in the above case, that is, that at least all those engaged in the same industry or craft could use the usual peaceful weapons of organized labor against an employer, whether they were his employees, or ex-employees or not. That is really the sole advance so far as organized labor is concerned of the Norris-LaGuardia Act.

The history of the specific legislation discloses that Congress intended exactly this broadening of the scope of the act.

E. History of Norris-LaGuardia Act.

"In the first session of the 70th Congress, Senator Shipstead of Minnesota, introduced a bill similar to the Norris-LaGuardia bills, entitled "A Bill to Amend the Judicial Code and to Define and Limit the Jurisdiction of Court sitting in Equity and For Other Purposes." The bill was referred to the Senate Judiciary Committee, and the language of the section defining a labor dispute is almost precisely the same as that contained in the present Norris-LaGuardia Act. Hearings were conducted on the bill on February 8, 9, 10, 11, 14, 16, 17, 18, 21, 22, 23, 24, 25 and 28, and March 1, 7, 10, 13, 15, 16, 20, 21 and 22, and December 18, 1928, before a Sub-Committee composed of Senators Norris of Nebraska, Blaine of Wisconsin, and Walsh of Montana. Among the witnesses at the hearing were Senator Shipstead, Andrew Furuseth, President of the International Seamen's Union of America, William Green, President of the American

Federation of Labor, John T. Frey, Secretary-Treasurer of the Metal Trades Department of the American Federation of Labor, Frank Morrison, Secretary, American Federation of Labor, Morris L. Ernst, representing the American Civil Liberties Union, New York City, Alfred P. Thom, General Counsel for the Association of Railway Executives, Alex J. Groesbeck, Governor of Michigan, W. H. Latta, Representative of the Indianapolis Street Railway Company, Albert Ward, U. S. District Attorney for Indiana, Walter Gordon Merritt, representing the League for Industrial Rights, Leon B. Lanfrom, lawyer, representing the Milwaukee Employers' Council and the Wisconsin Manufacturers Association, William P. Belden, counsel for Ohio Coal Operators Association and James A. Emery, counsel, National Association of Manufacturers and National Founders Association. That bill met with indifferent success, until the beginning of the first session of the 72nd Congress, when Senator Norris introduced Senate Bill No. 935, which bill carried the same title as the Shipstead Bill and was referred to the Senate Judiciary Committee.

Upon December 10th, 1931, Representative Fiorello H. LaGuardia introduced House Resolution 5315 and it was referred to the House Committee on Judiciary.

Upon February 4th, 1932, Senate Bill 935 was reported with amendments and with the statement "that extensive and unlimited public hearings" had been held upon the same subject in the 70th Congress on the Senate Bill of Senator Shipstead; the minority views of the committee expressed by Senator Hebert, was submitted and signed by Senators Hastings, Austin, Stephens and qualifiedly by King. The bill was debated in the Senate upon February 16, 23, 24, 25, 26 and 29, and March 1, 1933,

and passed by the Senate on that date, by a roll call vote of yeas—75, nays—5, with sixteen members of the Senate not voting.

The legislative history of House Resolution 5315 is as follows:

February 25th, 1932, hearings were held before the Committee on Judiciary; March 2nd, 1932, the bill was reported with amendments by Mr. LaGuardia; March 8, 1932, House Resolution 5315 was made a special order of business of the House of Representatives, was debated, amended and passed the House by a roll call vote of yeas —363, nays—13, and not voting—56.

Upon March 9th, 1932, House Resolution 5315 was debated, amended and passed by the Senate, the Senate insisting upon its amendment and asking a conference. On the same date the Conferees, Senators Norris, Blaine, and Walsh of Montana, were appointed; March 10th, 1932, the House of Representatives disagreed to the Senate amendment and agreed to the requested conference. The House Conferees, Representatives Summers, Montague and Dyer, of Missouri, were appointed; and upon March 14th, 1932, the conference report was submitted to the House and to the Senate.

Upon March 16th, 1932, the bill was re-committed to the Committee of Conference and upon the same day the conference report was withdrawn in the Senate. The conference report was agreed to in the House and submitted to the Senate upon March 17th, 1932, and upon March 18th, the Senate gave its approval thereto. The bill was examined and signed by the Speaker of the House upon March 19, 1932, and the bill signed by the Vice-President March 21st, 1932. It was presented to President Hoover March 22nd, 1932 and approved March 23, when it became law.

Before its approval by the President, the Chief Executive requested the opinion of the Attorney General of the United States, who recommended that the bill receive Executive approval."

It appears from this detailed analysis of the Act's legislative history, that it was recognized by an overwhelming majority of both branches of the Congress to be remedial legislation of great demand; that it received close and painstaking investigation and analysis after exhaustive hearings and debates in both branches of the Congress and was fully understood in all of its ramifications by both the executive and legislative branches of the government.

It is clear, therefore, both from the express and unambiguous language of the Norris-LaGuardia Act, as well as from the history of labor legislation in recent years, and from the history of the bills and resolutions which preceded the Norris-LaGuardia Act in Congress, that the legislation was meant to include a case such as the present under the term "labor dispute."

The categorical imperative of the Circuit Court of Appeals that—

"no strike or dispute between employer and employee is here involved"

which is the premise upon which its decision rests, is wrong.

Whether it be considered that a situation such as exists in this case is a strike or not, as has been shown it is clearly a labor dispute within the federal legislation. A strike is a labor dispute, but to avoid troublesome questions of definition Congress has used the more explicit broader term.

F. Deletion of Statute.

The decision of the Circuit Court of Appeals not only plainly misinterprets the Norris-LaGuardia Act, but deletes from the statute several important clauses. Thus several subdivisions of subsection (a) of Sec. 113 are necessarily eliminated if the present controversy is held not to be a labor dispute. The same is true of some of the clauses in subsection (b), and the very important clause at the end of subsection (c) "regardless of whether or not the disputants stand in the proximate relation of employer and employee," cannot possibly be considered to be still in existence if the present controversy is held not to be a labor dispute.

It is submitted that this is abrogation of the law, as well as misconstruction, and that a court has no right to deal thus with the acts of a legislative body. It is submitted that this court should give effect to the clear and unambiguous language of the act, and should refuse to sanction any elimination of any part of the law which clearly expresses the intent of the representatives of the people.

G. Question Settled in This Court.

The question at issue is no longer an open one in this Court. On May 24, 1937, in the case of

Senn v. Tile Layers Protective Union, Local No. 5, 301 U. S. 468, 81 L.Ed. 829, 57 (16) S.C.R. 857

this Court decided that a labor union could not be enjoined from picketing in a case in which the only question at issue was whether the employer should be permitted to work at the trade himself, and that such picketing could not be enjoined by the court, although none of the employees of the particular employer who was being

picketed were members of the labor union which was doing the picketing, and although there was no dispute between the employer and his employees. With reference to the particular question at issue here, the Court says, in the majority opinion by Justice Brandeis:

> "The unions acted, and had the right to act as they did, to protect the interest of their members against the harmful effect upon them of Senn's action * * * Because his action was harmful *the fact that none of Senn's employees was a union member or sought the union's aid was and is immaterial.*"
>
> "The law of Wisconsin as declared by its highest court permits unions to endeavor to induce an employer when unionizing his shop to agree to refrain from working in his business with his own hands—so to endeavor, *although none of his employees is a member of the union.*"
>
> "Each member of the unions, as well as Senn, has the right to strive to earn his living. Senn seeks to do so through the exercise of his individual skill and planning. The union members seek to do so through combination. Earning a living is dependent upon securing work, and securing work is dependent upon public favor. To win the patronage of the public each may strive by legal means." (Italics ours.)

The decision was rendered with reference to the Wisconsin Labor Code, Secs. 103.51 to 103.63, Wisconsin Statutes, 1935, but the provisions involved are identical with the provisions of the Norris-LaGuardia Act. Thus, the definition of "Labor Dispute," Wisconsin Statutes, Sec. 103.62(3) is identical with the definition in Sec. 113, Title 29 (c), and the language describing a labor dispute, Statutes of Wisconsin, Sec. 103.62(1) (2), is identical with Sec. 113, Title 29 (a) (b). Therefore, the decision of this court is a decision as to the question involved under the Norris-LaGuardia Act.

It follows that what was sustained under the Wisconsin Labor Code as peaceful and legal conduct, must likewise be sustained under the Norris-LaGuardia Act, the parallel Federal Statute.

The facts in the Senn case go much farther than the facts in the instant case, and require an interpretation of the provisions of the Labor Code much broader than is contended for by petitioners. The Senn case extended the doctrine of

American Furniture Co. v. I. B. of T. C. & H. of A., 222 Wis. 338, 268 N. W. 250.

The facts in the latter case were exactly parallel to the facts in the present case, that is, the union was striving to unionize plaintiff's shop in spite of the fact that none of his employees were members of the union. In the Senn case, the union not only insisted on unionizing Senn's shop, although his men were not members of the union, but demanded that he himself cease working with the tools of his trade. Upon these facts this Court held that the union had the right to picket and use all means of peaceful persuasion to bring about the desired result. It is, therefore, submitted that there can be no question but that the law is settled in this Court that appellant union has the right to picket in a case such as the present. Therefore, the decision of the Circuit Court of Appeals is not in accord with the law as laid down by this Court.

It is submitted that even the dissenting Justices of this Court in the Senn case clearly recognize the right of a union to picket under circumstances such as exist in the present case. The dissenting opinion says:

> "It may be assumed that the picketing, upheld in virtue of the challenged statute, lawfully might be employed in a controversy between employer and employees for the purpose of persuading the employer to increase pay, etc., and dissuading non-union

workers from displacing union members. The right of workers, parties to a labor dispute, to strike and picket peacefully to better their condition does not infringe any right of the employer."

And on page 6, Justice Butler says:

"The contest is not between unionized and other contractors, or between one employer and another. The immediate issue is between the unions and plaintiff in respect of his right to work in the performance of his own jobs. * * * Between union members and plaintiff there is no immediate or direct competition. * * * The interest of the unions in the manual labor done by the plaintiff is so remote, indirect and minute, that they have no standing as competitors. Under the circumstances disclosed here, the conduct of the unions was arbitrary and oppressive."

It is clear from Justice Butler's opinion that the dissent is based solely on the fact that the defendant union was not in competition with the employer who sought to work at the trade himself, and that for this reason alone the picketing was unlawful. It follows that if the union had been picketing because it was in competition with the employees of the employer whom it was picketing, the picketing would be lawful. Here, the appellant union is composed of butcher workmen in competition with the butcher workmen employees of respondent, and consequently the picketing is lawful, even within the reservations of the dissenting opinion in the Senn case.

The decision of the Circuit Court of Appeals was likewise out of accord with the decisions of this court in

Virginia Railway Co. v. System Federation No. 40, 81 L.Ed. 470, 299 U.S. 529.

National Labor Relations Act Cases, 301 U.S. 1, 49, 58, 103, 142; 81 L.Ed. 563, 585, 603, 108, A.L.R. 1352.

IV.

THE CASE INVOLVES A LABOR DISPUTE WITHIN THE TERMS OF THE WISCONSIN LABOR CODE, WISCONSIN STATUTES, 1935, 103.51 TO 103.63, AND THE ACTS OF APPELLANTS IN THIS CASE ARE EXPRESSLY LEGALIZED BY THAT ACT

The second ground which the Circuit Court of Appeals assigns for its decision is, that by the preamble of the Norris-LaGuardia Act and the preamble of the Wisconsin Labor Code, the employees' right to free organization is guaranteed, and that the acts of appellants are in violation of such right, and therefore the object to be attained by them is unlawful, is involved with its decision upon and its interpretation of the Wisconsin Labor Code, and is therefore here treated in connection with that subject.

A. Object Not Unlawful.

As has been stated, the decision of the Circuit Court of Appeals holds that the object to be attained by picketing and persuasion is unlawful, and that, therefore, the acts of picketing and persuasion are unlawful.

Sec. 103.53, Statutes of Wisconsin, 1935, (See appendix), provides, somewhat differently than the parallel provision of the Norris-LaGuardia Act, that the specific acts enumerated, whether performed singly or in concert, *shall be legal*. The enumerated acts include, giving publicity to, or communicating information regarding the existence of or the facts involved in any dispute, whether by advertising, speaking; patrolling any public street or any place where any person or persons may lawfully be; assembling peaceably to do any of the acts specified; ad-

vising or notifying any person or persons of an intention to do any of the acts specified; advising, urging or inducing others to do the act specified; peaceful picketing or patrolling, whether engaged in singly or in numbers. The parallel section of the Norris-LaGuardia Act, 29 U. S. C. 104 does not provide in the same language that such acts are legal, but takes away the jurisdiction to issue injunctions against them, nor does it contain the extra and specific provision contained in 103.53 Wisconsin Statutes (1) as follows:

> "Peaceful picketing or patrolling, whether engaged in singly or in numbers, shall be legal."

It is clear from the foregoing quotation of the language of the Statutes of Wisconsin that the legislature has made the acts here enjoined legal acts if they were not so before the enactment of the statute. This court held in

Senn v. Tile Layers Protective Union, supra,

under Point Second, that by virtue of the statute such acts were legal. The court says, under Point Third,

> "That the members of a labor union might, without special statutory authorization by a state make known the facts of a labor dispute for freedom of speech is guaranteed by the federal constitution."

It is submitted that in view of this provision of the statute of Wisconsin, the decision of the Circuit Court of Appeals to the effect that the means here employed, that is, the picketing and persuasion, were unlawful, is clearly erroneous.

In

American Furniture Co. v. I. B. of T. C. & H. A. Local No. 200, 222 Wis. 338, 268 N. W. 250,

the Supreme Court of Wisconsin decided a case involving exactly the same situation as exists in the present case. In that case none of the employees of the plaintiff were members of the defendant union which picketed plaintiff's place of business, and the employees had all voted on two separate occasions unanimously that they did not want to join the union and were satisfied with their conditions of employment. There was absolutely no dispute therefore between the employer and his own employees. The question as to whether under these circumstances there was a labor dispute within the meaning of the Wisconsin Labor Code, and the Norris-LaGuardia Act, was the principal issue in the case. The court says (222 Wis. 347):

> "Upon these facts, the question is squarely presented whether there was a labor dispute involving plaintiff and defendants in view of the fact, (1) that no employee of plaintiff was a member of defendant unions; (2) that none desired or was willing to become a member; (3) that the employees were wholly satisfied with the conditions of their employment; (4) that the employees opposed the execution of the contract proposed for plaintiff's execution; (5) that plaintiff has been unwilling to coerce its employees to join the unions, and has throughout been willing to take such position in that respect as its employees desired."

Upon this state of facts, the court decided, after careful analysis of the statutes and their historical background that there was clearly a labor dispute and refused to enjoin the union from picketing and peaceful persuasion. The court shows that the acts sought to be enjoined are legalized by the statute, and that the jurisdiction of the courts to proceed by equitable relief, was clearly intended to be taken away.

The decision is squarely contrary to the decision of the Circuit Court of Appeals in the instant case.

The question raised by the Circuit Court of Appeals in its decision in this case that the demand of the union upon the employer to recognize it as the bargaining agent of his employees, although his employees were not members of that union and did not designate it as a bargaining agent, is coercion in violation of the preamble of the Norris-LaGuardia Act and the Wisconsin Labor Code, was answered by the court in the negative (American Furniture case, supra, 367, et seq.)

The court there shows that the preamble of both acts provides only that the worker shall be free from interference and coercion *by the employer,* and that neither act contained any provision, either in the body of the act, nor in the preamble, prohibiting such interference or indirect coercion as may result from the activity and efforts of a labor union in the exercise of its rights of persuasion and effort at organization to get all employees into the union. It is clear that neither Congress nor the legislature of Wisconsin intended that there should be any prohibition on the labor unions in exercising to the fullest extent their efforts to obtain 100% organization.

The language of the preamble of both acts is identical with reference to this matter, and is as follows:

> "The individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows. It is necessary that he have full freedom of association, self-organization,

> and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. * * * "

It will be noted that the language of both preambles is "free from the interference, restraint or coercion of *employers of labor, or their agents.*"

If Congress and the legislature of Wisconsin had intended to prohibit the incidental effect in forcing certain employees who do not wish to join organizations into such organizations, it would have said so, or at least would not have used the definite and clear language restricting only coercion by employers. This is the old argument against the strike for a closed shop. It has been repeatedly urged that the strike for a closed shop forces those employees who do not wish to join any organization, either to join the organization or quit their employment. Nevertheless, the question of the right to strike for, and agitate for, the closed shop is no longer an open one.

The Circuit Court of Appeals says, that it is the declared public policy of both the Nation and the State of Wisconsin to protect the substantive right of employees not to be coerced to join any organization, and that such right will be protected by injunction even though no specific provision therefor be contained in either the Wisconsin Labor Code or the federal legislation. This statement is exactly the contrary of the true situation today if it be applied, as the Circuit Court of Appeals applies it, to such pressure as results from labor's own

efforts to organize. It is the declared public policy, both of the United States and of the State of Wisconsin, that economic peace can only be obtained by fostering and aiding organizations of laboring men and permitting them the utmost freedom in their attempt to organize all workingmen. This is clearly expressed in the legislation. It is the background of much other modern labor legislation, and it is the public policy expressed by this court. It has become the settled doctrine that this country can not get out of its industrial turmoil and achieve conditions of industrial peace and that good order cannot be restored except by fostering labor organizations and treating with workingmen in organizations. Therefore, it is a beneficent exercise of the police power of the Government to aid labor organizations and assist them in their efforts to get all workingmen into such organizations.

> "Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. *American Steel Foundries v. Tri-City Central Trades Council,* 257 U. S. 184, 209. We reiterated these views when we had under consideration the Railway Labor Act of 1926. Fully

recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it. Congress could seek to make appropriate collective action of employees an instrument of peace rather than of strife. We said that such collective action would be a mockery if representation were made futile by interference with freedom of choice."

National Labor Relations Board v. Jones & Laughlin Steel Corporation (301 U. S. 1) 81 L. Ed. 573.

"It has been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. *American Steel Foundries v. Tri-City Central Trades Council,* 257 U. S. 184, 209. Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife."

Texas & N. O. R. Co. v. Ry. Clerks, 281 U. S. 548, 570.

"In dealing with the relation of employer and employed, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression."

West Coast Hotel Co. v. Parrish, 300 U. S. 379, 393.

It is clear, therefore, that that statement of public policy by the Circuit Court of Appeals is erroneous.

Following the case of *American Furniture Co. v. I. B. of T. C. & H.*, supra, the Supreme Court of Wisconsin decided the case of

Senn v. Tile Layers Protective Union, Local No. 5, 222 Wis. 383, 268 N. W. 270,

and extended the doctrine of the American Furniture case by holding that a labor dispute existed, notwithstanding that all employees of the employer were satisfied, and did not wish to join the union, and that there was no dispute between the employer and his employees, and that it was sufficient ground to constitute a labor dispute that the union demanded that the employer cease to work with the tools of his trade.

It is clear, therefore, that the decision of the Circuit Court of Appeals is contrary to the law of Wisconsin, and that, therefore, it is erroneous. Irrespective of what the Circuit Court of Appeals held as to the Norris-LaGuardia Act, its decision as to the Wisconsin Labor Code is erroneous, and this in itself is ground for its reversal.

B. Picketing and Persuasion Not Torts.

The statement by the Circuit Court of Appeals that the acts of picketing and persuasion under the circumstances here present were unlawful acts would seem to indicate that the court regarded them as torts. As has been shown, these acts by the Labor Code of Wisconsin were expressly legalized, and if they ever were torts in Wisconsin they certainly are not such today. However, there is no authority at common law for holding that picketing and persuasion by workingmen is tortious. While courts have in many instances enjoined such conduct under certain circumstances, this has commonly

been done without accurate analysis of the nature of the acts. If the acts constituted torts, then the law must afford the usual common law remedy of damages. The courts have not held that this results from such acts. While it was an established common law doctrine that the malicious enticing of a workman from his employer, or malicious interference with the contract of employment was a tort, it was not held that interference with the employer by persuasion and picketing during a strike constituted a common law tort. In

American Foundries v. Tri-City Council,
257 U. S. 184,

Chief Justice Taft discusses the question (208, et seq.) and comes to the conclusion that since the strike has become a lawful instrument in the economic struggle, such conduct cannot constitute a tort; that such conduct is only malicious when the basis, that is, a strike or economic controversy with the employer, does not exist. Since by the present legislation labor disputes are legalized, such conduct in any labor dispute cannot be a tort. The reasoning of Justice Taft applies to those persons who were held not to have the right to picket under the then rule of law. In the present case, as has been shown there was clearly a labor dispute. Since that is so, the picketing and persuasions could not constitute a tort. But even if the premise that there was no labor dispute were correct, the picketing and persuasion could not be held to be malicious under the rule laid down by Chief Justice Taft. Therefore, it was not a tort. While such conduct was not tortious, courts often exercised their equity power to enjoin it. That equity power has been taken away both by the Norris-LaGuardia Act and the Wisconsin Labor Code.

It follows that there was no basis in law to enjoin the persuasion and picketing in this case.

It is submitted that it has been shown that the decision of the Circuit Court of Appeals is contrary to and does violence to the Wisconsin Labor Code, and that the decision of the Supreme Court of Wisconsin upon parallel facts correctly interprets the Wisconsin Labor Code. It has also been shown that the conduct here enjoined is not tortious, and the statement by the Circuit Court of Appeals that such conduct is unlawful, is not based upon any rule of the common law, and is unsound legal reasoning. It is, therefore, submitted that the judgment should be reversed.

V.

THE CONSTITUTIONALITY OF THE NORRIS-LAGUARDIA ACT IS BEYOND QUESTION AND HAS BEEN DECIDED BY THIS COURT

The only question of constitutionality with reference to the Norris-LaGuardia Act has been settled beyond question by this court, and is so clear from the terms of the constitution itself that it would seem to be beyond argument.

A. Abolition of Jurisdiction to Issue Injunctions.

As has been shown, the Norris-LaGuardia Act merely limits the equity jurisdiction of the Federal court by taking away that part of their power which they heretofore exercised in issuing injunctions in labor disputes. The question of constitutionality therefore relates to Article III, Sec. 2 of the Constitution of the United States. It is the settled law of this court that all juris-

diction of all the Federal courts, except this court, is derived solely from the statutes of Congress.

Kline v. Burke Construction Co., 260 U. S. 226, 67 L. Ed. 226, 43 S. Ct. 97, at l. c. 231.

> "The effect of these provisions is not to vest jurisdiction in the inferior courts over the designated cases and controversies, but to delimit those in respect of which Congress may confer jurisdiction upon such courts as it created. Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold, or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution. Turner v. Bank of North America, 4 Dall. 8, 10, 1 L. ed. 718, 719; United States v. Hudson, 7 Cranch, 32, 3 L. ed. 259; Sheldon v. Sill, 8 How. 441, 448, 12 L. ed. 1147, 1150; Stevenson v. Fain, 195 U. S. 165; 49 L. ed. 142, 25 Sup. Ct. Rep. 6. The Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated cases, but it required an act of Congress to confer it. Nashville v. Cooper, 6 Wall. 247, 252, 18 L. ed. 851, 852. And the jurisdiction, having been conferred, may, at the will of Congress, be taken away in whole or in part."

B. No Question Under Fifth Amendment.

The Norris-LaGuardia Act created no substantive rights and takes none away that existed before its passage. Therefore, no question arises as to its validity as an exercise of the police power of Congress under the equal protection and due process clauses of the Fourteenth Amendment, nor under the similar provisions of the Fifth Amendment.

The constitutionality of the Wisconsin Labor Code was established by this court in

Senn v. Tile Layers Protective Union, 301 U. S. 468, 57 S. Ct. 857, 81 L. Ed. 829.

At l. c. 477, the court says:

> "The question for our decision is whether the statute as applied to the facts found took Senn's liberty or property or denied him equal protection of the laws in violation of the Fourteenth Amendment."

at l. c. 478:

> "THIRD. Clearly the means which the statute authorizes—picketing and publicity—are not prohibited by the Fourteenth Amendment. Members of a union might without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

at l. c. 480:

> "FOURTH: The end sought by the unions is not unconstitutional."

at l. c. 482:

> "SIXTH: It is contended that in prohibiting an injunction the statute denied to Senn equal protection of the laws, and Truax v. Corrigan, supra, is invoked. But the issue suggested by plaintiff does not arise. For we hold that the provisions of the Wisconsin statute which authorized the conduct of the unions are constitutional. One has no constitutional right to a 'remedy' against the lawful conduct of another."

If there were any question as to the validity of the Norris-LaGuardia Act under the due process act of the Fifth Amendment of the Constitution, the same would

be disposed of by the foregoing decision of this court with reference to the Wisconsin Act. The provisions of the Norris-LaGuardia Act are parallel to the Wisconsin Act, and clearly if the Wisconsin Act does not violate the equal protection and due process clauses of the Fourteenth Amendment, then the Norris-LaGuardia Act could not violate the due process clause of the Fifth Amendment. However, this question does not even arise because the Norris-LaGuardia Act constitutes merely a limitation of the equity jurisdiction of the Federal courts.

As has been shown there can be no question of the constitutionality of either the Norris-LaGuardia Act or the Wisconsin Labor Code, and that the broadest interpretation of these acts as was given in the Senn case does not create questions of validity.

VI.

THE DECISION OF THE CIRCUIT COURT OF APPEALS IS NOT IN ACCORD WITH EXISTING LAW

The Circuit Court of Appeals for the Seventh Circuit stands practically alone in the stand which it has taken in the cases which culminated in the decision in the present case as to the rights of organized labor upon facts such as exist in this case. It is the general modern doctrine that the right to picket and use peaceful persuasion exists without statute where facts such as exist in the present case are present.

In the appendix to respondent's brief in *Senn v. Tile Layers Protective Union, supra,* (No. 658, October 1936 Term) are listed 17 states which have passed labor codes or laws similar to the Norris-LaGuardia Act. Since

that list was made Maryland and Pennsylvania have passed new legislation on the subject.

The doctrine is quite well established by the decided cases today whether under the legislation referred to, or without it, that organizations of labor have the right to strike for a closed shop, or to picket peacefully without declaring a strike, and to use every means of peaceful persuasion to attempt to increase their organization, to persuade workingmen to join such organization and to dissuade the public from dealing with an employer who refuses to deal with a labor organization. It is also settled that this right to use peaceful persuasion extends at least to all those engaged in the same industry irrespective of the fact whether employees of the particular employer have a dispute with him or not. Picketing and persuasion by labor unions for the purpose of unionizing a particular industrial establishment, is legal.

> "The purpose of a labor union to improve the conditions under which its members do their work, to increase their wages, to assist them in other ways, may justify what would otherwise be a wrong. So would an effort to increase its numbers and to unionize as entire trade or business. * * * Economic organization today is not based on the single shop. Unions believe that wages may be increased, collective bargaining maintained, only if union conditions prevail, not in some single factory, but generally. That they may prevail, it may call a strike and picket the premises of an employer with the intent of inducing him to employ only union labor. And it may adopt either method separately. Picketing without a strike is no more unlawful than a strike without picketing. Both are based upon a lawful purpose. Resulting injury is incidental and must be endured."

Exchange Bakery & Restaurant v. Rifkin, 245 N. Y. 260.

"The modern view is that picketing is not per se unlawful, and should not be enjoined, if peaceably carried on for a lawful purpose."

Bayonne Textile Corporation v. American Federation of Silk Workers et al., 116 N. J. Eq. 146, 176 A. 551.

Steffes v. Motion Picture Operators' Union, 136 Minn. 200, 161 N.W. 524.

Kirmse v. Adler, 311 Pa. 78, 166 Atl. 566.

United Chain Theatres Company v. Philadelphia M. P. M. O. Union (Pa.), 50 Fed. (2d) 189.

S. A. Clark L. Co. v. Cleveland W. & D. Local No. 106 (Ohio) 154 N. E. 362.

Blumauer v. Local No. 159, 141 Ore. 399, 17 Pac. (2) 1115.

Cinderella Theater Co. v. Sign Writers' Local Union (D. C. Mich.), 6 F. Supp. 164.

Fenske Bros. v. Upholsterers International Union of North America, 358 Ill. 239, 193 N. E. 112.

Dean v. Mayo (La.), 8 F. Supp. 73.

Miller Parlor Furniture Company v. Furniture W. I. Union (N. J.), 8 F. Supp. 209.

National Protective Association of Steam Fitters & Helpers v. Cummings et al., 170 N. J. 315, 63 N. E. 369.

Nann v. Raimist, etc., 255 N. Y. 307, 174 N. E. 690.

Wise Shoe Co., Inc., v. Retail Shoe Salesmen's Union, 266 N. Y. 264, 194 N. E. 749.

Curran v. Galen (N. Y.), 46 N. E. 297.

Jacobs v. Cohen, 76 N. E. 5.

Kissem v. Printing Company, 92 N. E. 214.

Roddy v. United Mine Workers (Oklahoma) 139 Pac. 126.

Shaughnessy v. Jordan (Indiana) 111 N. E. 622.

Grace Company v. Leonard Willams et al., 20 F. Supp. 263.

Coryell & Son v. Petroleum Workers Union, et al., 19 F. Supp. 749.

American Furniture Co. v. I. B. of T. C., etc., Local No. 200, 222 Wis. 338, 268 N. W. 250, 106 A.L.R. 335. (Copious note giving history and many cases.)

Geo. B. Wallace Co. v. International Assn. of Mechanics, Mt. Hood Lodge, Local No. 1005 Auto Mechanics, 63 Pac. (2d) 1090 (Ore.).

Starr v. Laundry & Dry Cleaning Workers Local Union No. 101, 63 Pac. (2d) 1104.

Levering v. Garrigues Co. v. Morrin, 71 F. (2d) 284, (C.C.A. 2nd, 1934), Cert. Den. 293 U. S. 595.

It is submitted that the decision of the Circuit Court of Appeals is erroneous under the generally prevailing law in the United States.

VII.

THE DECREE OF THE DISTRICT COURT AWARDING THE INJUNCTION WITHOUT THE FINDINGS OF FACT REQUIRED BY THE FEDERAL AND WISCONSIN STATUTES, WAS WITHOUT JURISDICTION, AND THE DECISION AFFIRMING IT, IS ERRONEOUS

While the District Court complied with the Norris-LaGuardia Act and regarded the case as one involving a labor dispute, insofar as it required oral evidence in open court as a condition to the issuance of the injunction it failed to require the showing of the facts which are a condition precedent to the granting of an injunction either temporary or permanent in a case involving a labor dispute.

The Norris-LaGuardia Act provides, 29 U.S.C. Sec. 107, that no Federal court shall have jurisdiction to issue an injunction in any case involving or growing out of labor dispute, except after findings of fact by the court, (a) that unlawful acts have been threatened and will be committed unless restrained, or have been threatened and will continue unless restrained; (b) that substantial and irreparable injury to complainant's property will follow; (c) that as to each item of relief granted greater injury will be inflicted upon complainant by denial of relief than will be inflicted upon defendant by granting of relief; (e) that public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

The section has definitely revoked the jurisdiction of the Federal Courts to issue injunctions in labor dis-

putes, unless specified facts are present and found to be present by the court. In the present case the court upon its conclusion that there was no labor dispute involved in the case required no evidence as to any of the facts specified in the foregoing section of the act, and refused to make any findings as to these facts. Since it has been shown that the case clearly involves a labor dispute, the injunction was without jurisdiction of the court.

It will be urged by respondent that the District Court has found in its findings of fact that appellants have gone beyond peaceful conduct. It is true that the findings of fact contain the conventional accumulation of words usually included by counsel in findings of fact in cases of this kind. Thus the court finds (T.R. 6 and 66) that for the purpose of coercing respondent to require its employees to join the union, and for the purpose of injuring and destroying the business of respondent, appellants have conspired to cause and have caused false and misleading signs and placards to be placed before the markets of the respondent, and have falsely accused the respondent of being unfair to organized labor, and have prevented patrons of respondent from patronizing said markets by molestation, annoyance, threats and intimidation. The evidence, which is very brief, shows that the acts of the appellants consisted in carrying the usual signs stating their opinion that respondent was unfair to organized labor, and that the persuasion consisted in attempting to induce the public not to deal with respondent. There was no violence, no breaches of the peace and no necessity for the interference of peace officers. The activities were the usual ones incident to a strike or picketing.

But even though the findings of the District Court be taken as a verity and though the words used therein be taken in their broadest scope, it is submitted that the judgment of the District Court, and the injunction issued upon the same, were erroneous in law.

The judgment (T.R. 9) provides that a writ of permanent injunction issue restraining the defendants "from *in any wise* picketing," and "from advertising, stating or pretending that the said complainant, E. G. Shinner & Company is *any wise unfair to said* defendant, or organized labor generally, and from annoying, molesting or *persuading* or *soliciting* any customers or prospective customers to cease patronizing the complainant." The permanent injunction (R. 10, (6172)-) is in the same terms. Whether or not there had been acts on the part of appellants which exceeded their rights, or the rights of organized labor, the judgment and injunction in these terms, is not warranted by the law.

> "Here, however, the excess has been noise and shouting whereby customers were frightened and crowds collected. We have never gone so far as to hold that wherever acts or words went beyond peaceful picketing, all picketing was to be enjoined."
>
> *Wise Shoe Co., Inc. v. Retail Shoe Salesmen's Union,* 266 N. Y. 264.

The same situation prevailed in—

> *Bayonne Textile Corporation v. American Federation of Silk Workers, et al.,* 116 N. J. Eq. 146, 176 A. 551.

in which the Appellate Court held that an injunction of the scope of this one was not legally permitted.

It is submitted that there is nothing in the evidence of this case distinguishing it from the usual case of a labor dispute, with its concomitants of noise, excitement and some boisterousness, and that there was no basis for the general language contained in the findings. But, whether this be true or not, there was no basis in law for the prohibition against *all picketing* and *all peaceful persuasion*. Therefore, the decision of the Circuit Court of Appeals in sustaining the judgment of the District Court was erroneous.

The Circuit Court of Appeals also endeavors to sustain its position, and it will no doubt be argued here by respondent, that there is a controversy here between two unions, and that the employer is not interested in this fight. This is not a fact. The attempt to put up the so-called rival union as against petitioner union is the usual transparent subterfuge of the employer to divert attention from himself and seek to focus it on a straw man of his own creation.

There is no finding of fact by the trial court as to any controversy with any alleged union of the employees of the respondent. Clearly, therefore, the trial court was convinced that there was no contest between any rival union. The findings of fact both upon the granting of the temporary injunction (T.R. 66) and upon the trial (T.R. 6) definitely settled the fact that this is a contest between an employer and employee.

The respondent did try to divert attention by establishing the existence of a union amongst its own employees. That this so-called union was the conventional and notorious employers' own union at which the provisions of the Wagner Labor Relations Act are aimed is clear beyond question from the evidence. When

the employer became aware that a labor controversy was about to be started by petitioner union to improve conditions in respondent's place of its business, and to demand the recognition of the union, it started the usual tactics of endeavoring to create a union in its own place, and this it did, as it is always done in these cases, by attempting to produce the initiative through some of its employees. Mr. Russell, the Vice-President of respondent, would not say that the union was not a countermove against the A.F.L. Union, but immediately came forward with the statement that it was formed on the request of the "boys", meaning his employees (T.R. 44). At the request of the employees, he says that he helped them start it and that the company helped form the company union, and of course, the company union, as is always the case in these controversies became a 100% union, that is, every employee of respondent belonged to it. (See testimony of Sokolowski, T.R. 50), who also describes how the union was formed at luncheons with the help of Vice-President Russell and a Mr. Anderson who was brought from Chicago by the company for the specific purpose of forming the union and providing it with constitution and by-laws. The men did not know who he was (T.R. 52) but it was afterwards stipulated by counsel for respondent that he is the secretary and auditor of the company (T.R. 58). It is clear, therefore, that this so-called union is a company union and a mere sham created to fool the men and to hamper real labor organization. Nor were the men, who suddenly became so anxious to have a labor organization, informed that a few days before the company had received the demand of the petitioner, A.F.L. Union that it sign a union agreement. (T.R. 52), and it is quite evident

that all employees knew that, in spite of the profession by respondent of the freedom of choice of labor organizations accorded the employees, that they had to belong to the company union (T.R. 63, testimony of Heller) to hold their jobs.

It is clear, therefore, that there is no basis for the statement of the Circuit Court of Appeals that this is a controversy between two unions. It is a labor controversy against an employer who has created for his own purposes an agency to help him defeat organized labor, that is, the company union. It is clear also that there is no analogy between this case and *United Electric Coal Co. v. Rice,* 80 Fed. (2nd) 1, in which case there were really and in truth two rival labor organizations not formed by the employer, or through his intervention, but the voluntary creation of workmen. It is, therefore, submitted that the statement by the Circuit Court of Appeals as to the existence of a dispute between rival unions in this case is not warranted by the facts and gives no support to its decision.

CONCLUSION

It has been shown that the decision of the Circuit Court of Appeals strikes out from the Norris-LaGuardia Act essential provisions thereof, and that by this means the entire purpose of the act is frustrated. It has also been shown that it was clearly the intent of Congress that every controversy in the economic field between the employer and workingmen was intended to be covered by the act, and that there can be no doubt at least that a case such as the present in which the controversy is directly between employees and employer engaged in the same

craft and industry, was certainly intended to be covered by the act; that this excessively clear from the definite terms of the act itself, together with many explanatory clauses, and the use of the most broadly inclusive terms, as well as from the history of the act in Congress, and the debates in committee which reported the act. It has also been shown that the immediate reason for the act and the aim of organized labor in obtaining its passage was to offset the construction of the Clayton Act by this court in the American Foundries case; that the decision of the Circuit Court of Appeals would nullify this aim and purpose and set the law back to where it was prior to the decision in the American Foundries case. It has also been shown that the language of the preamble is clear to the effect that it is the public policy of the country expressed by Congress that self-organization of laboring men shall be free from employer interference, and that such coercion as results from use by organized labor itself of its strength to increase its organization, is not within the condemnation of the act. It has also been shown that under the terms of the act it is of no significance that none of the employees of respondent were members of appellant union. It has been further shown that the terms of the Wisconsin Act are synonymous with the Norris-LaGuardia Act, and that the interpretation of the Wisconsin Act by the Wisconsin Supreme Court contrary to the interpretation by the Circuit Court of Appeals, is correct. It has further been shown that the case presents the conventional and oft-repeated economic controversy of organized labor with an employer, the sole object of which is the strengthening of organization and the extension of membership, and that such object is generally recognized as legitimate by the courts, and as one of the objects which was intended to be protected by

the terms of the state and federal legislation. It has further been shown that upon all grounds the decision of the Circuit Court of Appeals, is erroneous.

The case is of transcendent importance to organized labor. Upon its decision depends the realization whether real gain has been achieved in recent years by legislation intending to vouchsafe and broaden the rights of labor. Upon its decision depends whether economic war shall again be the rule of the day, or whether industrial peace so much desired by the people of the country, shall replace it.

The decision involves not only a construction of the federal legislation, but the final construction of acts in a large number of states which have been modeled upon. Many cases are pending awaiting decision of this case; others have been erroneously decided upon the basis of the decision of the Circuit Court of Appeals. It is submitted that the decision of the Circuit Court of Appeals of one circuit out of accord with the other federal courts, and out of accord with the state courts, should not be permitted to nullify important legislation.

Respectfully submitted,

MORRIS FROMKIN,
Counsel for Appellants.

APPENDIX

PROVISIONS OF NORRIS-LAGUARDIA ACT APPLICABLE TO THIS CASE

Sec. 102. PUBLIC POLICY IN LABOR MATTERS DECLARED. In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are hereby enacted.

Sec. 104. ENUMERATION OF SPECIFIC ACTS NOT SUBJECT TO RESTRAINING OR-

DERS OR INJUNCTIONS. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 103 of this chapter;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or employment benefits or insurance, or other moneys or things of value;

(d) By all, lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 103 of this chapter.

Sec. 105. DOING IN CONCERT OF CERTAIN ACTS AS CONSTITUTING UNLAWFUL COMBINATION OR CONSPIRACY SUBJECTING PERSONS TO INJUNCTIVE REMEDIES. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 104 of this chapter.

Sec. 107. ISSUANCE OF INJUNCTIONS IN LABOR DISPUTES; HEARING; FINDINGS OF COURT; NOTICE TO AFFECTED PERSONS; TEMPORARY RESTRAINING ORDER; UNDERTAKINGS. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered and except after findings of fact by the court, to the effect. (a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or tem-

porary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order

shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

Sec. 109. GRANTING OF RESTRAINING ORDER OR INJUNCTION AS DEPENDENT ON PREVIOUS FINDINGS OF FACT; LIMITATION ON PROHIBITIONS INCLUDED IN RESTRAINING ORDERS AND INJUNCTIONS. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings

of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

Sec. 113. DEFINITIONS OF TERMS AND WORDS USED IN CHAPTER. When used in this chapter, and for the purposes of this chapter— (a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or

indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

WISCONSIN LABOR CODE

Sec. 103.51. PUBLIC POLICY AS TO COLLECTIVE BARGAINING. In the interpretation and application of Sections 103.51 to 103.63 the public policy of this state is declared as follows:

Negotiation of terms and conditions of labor should result from voluntary agreement between employers and employes. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom

of association, self-organization, and the designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Sec. 103.53. LAWFUL CONDUCT IN LABOR DISPUTES. (1) The following acts, whether performed singly or in concert, shall be legal:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment regardless of any promise, undertaking, contract or agreement in violation of the public policy declared in Section 103.52;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 103.52;

(c) Paying or giving to, any person any strike or employment benefits or insurance or other moneys or things of value;

(d) By all lawful means aiding any person who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any state;

(e) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, patroling any public street or any place where any person or persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

(f) Ceasing to patronize or to employ any person or persons, but nothing herein shall be construed to legalize a secondary boycott;

(g) Assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests;

(h) Advising or notifying any person or persons of an intention to do any of the acts heretofore specified;

(i) Agreeing with other persons to do or not to do any of the acts heretofore specified;

(j) Advising, urging, or inducing without fraud, violence or threat thereof, others to do the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 103.52; and

(k) Doing in concert any or all of the acts heretofore specified shall not constitute an unlawful combination or conspiracy;

(l) Peaceful picketing or patrolling, whether engaged in singly or in numbers, shall be legal.

(2) No court, nor any judge or judges thereof, shall have jurisdiction to issue any restraining order or temporary or permanent injunction which, in specific or general terms, prohibits any person or persons from doing, whether singly or in concert, any of the foregoing acts.

Sec. 103.55. PUBLIC POLICY AS TO LABOR LITIGATION. In the interpretation and application of Sections 103.56 to 103.59, the public policy of this state is declared to be:

Equity procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the respond-

ing party or parties, or that issues after hearing based upon written affidavits alone and not wholly or in part upon examination, confrontation and cross-examination of witnesses in open court, is peculiarly subject to abuse in labor litigation for the reasons that

(1) The status quo cannot be maintained but is necessarily altered by the injunction;

(2) Determination of issues of veracity and of probability of fact from affidavits of the opposing parties that are contradictory and, under the circumstances, untrustworthy rather than from oral examination in open court in subject to grave error;

(3) Error in issuing the injunctive relief is usually irreparable to the opposing party; and

(4) Delay incident to the normal course of appellate practice frequently makes ultimate correction of error in law or in fact unavailing in the particular case.

Sec. 103.56. INJUNCTIONS; CONDITIONS OF ISSUANCE; RESTRAINING ORDERS. (1) No court nor any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in section 103.62, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of all the following facts by the court or judge or judges thereof:

(a) That unlawful acts have been threatened or committed and will be executed or continued unless restrained;

(b) That substantial and irreparable injury to complainant's property will follow unless the relief requested is granted;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial thereof than will be inflicted upon defendants by the granting thereof;

(d) That the relief to be granted does not violate the provisions of Section 103.53;

(e) That complainant has no adequate remedy at law; and

(f) That the public officers charged with the duty to protect complainant's property have failed or are unable to furnish adequate protection.

(2) Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to those public officers charged with the duty to protect complainant's property. Provided, however, that if a complainant shall also allege that unless a temporary restraining order shall be issued before such hearing may be had, a substantial and irreable, such a temporary restraining order may be granted parable injury to complainant's property will be unavoidupon the expiration of such reasonable notice of application therefor as the court may direct by order to show cause, but in no case less than forty-eight hours.

(3) Such order to show cause shall be served upon such party or parties as are sought to be restrained and as shall be specified in said order, and then only upon testimony under oath, or in the discretion of the court, upon affidavits, sufficient, if sustained, to justify the court

in issuing a temporary injunction upon a hearing as herein provided for.

(4) Such a temporary restraining order shall be effective for no longer than five days, and at the expiration of said five days shall become void and not subject to renewal or extension, provided, however, that if the hearing for a temporary injunction shall have been begun before the expiration of the said five days the restraining order may in the court's discretion be continued until a decision is reached upon the issuance of the temporary injunction.

(5) No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

(6) The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any part having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

Sec. 103.57. CLEAN HANDS DOCTRINE. No restraining order or injunctive relief shall be granted to

any complainant who has failed to comply with any legal obligation which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available machinery of governmental mediation or voluntary arbitration, but nothing herein contained shall be deemed to require the court to await the action of any such tribunal if irreparable injury is threatened.

Sec. 103.58. INJUNCTIONS: CONTENTS. Except as provided in Section 103.56, no restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and expressly included in said findings of fact made and filed by the court as provided herein; and shall be binding only upon the parties to the suit, their agents, servants, employes and attorneys, or those in active concert and participation with them, and who shall by personal service or otherwise have received actual notice of the same.

Sec. 103.62. DEFINITIONS. When used in Sections 103.51 to 103.63, and for the purposes of these sections:

(1) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are

engaged in a single industry, trade, craft, or occupation; or who are employes of one employer; or who are members of the same or an affiliated organization of employers or employes; whether such dispute is (1) between one or more employers or associations of employers and one or more employes or associations of employes; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employes or associations of employes and one or more employes or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in subsection (3)) of "persons participating or interested" therein (as defined in subsection (2)).

(2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it and he or it is engaged in the industry, trade, craft, or occupation in which such dispute occurs, or is a member, officer, or agent of any association of employers or employes engaged in such industry, trade, craft or occupation.

(3) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, or concerning employment relations, or any other controversy arising out of the respective interests of employer and employe, regardless of whether or not the disputants stand in the proximate relation of employer and employe.